

SUBCHAPTER C—CIVIL AVIATION SECURITY

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

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SOURCE: 67 FR 8353, Feb. 22, 2002, unless otherwise noted.

Subpart A—General

§ 1540.1 Applicability of this subchapter and this part.

This subchapter and this part apply to persons engaged in aviation-related activities.

§ 1540.3 Delegation of authority.

(a) Where the Administrator is named in this subchapter as exercising authority over a function, the authority is exercised by the Administrator or the Deputy Administrator, or any individual formally designated to act as the Administrator or the Deputy Administrator.

(b) Where TSA or the designated official is named in this subchapter as exercising authority over a function, the

authority is exercised by the official designated by the Administrator to perform that function.

§ 1540.5 Terms used in this subchapter.

In addition to the terms in part 1500 of this chapter, the following terms are used in this subchapter:

Air operations area (AOA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes aircraft movement areas, aircraft parking areas, loading ramps, and safety areas, for use by aircraft regulated under 49 CFR part 1544 or 1546, and any adjacent areas (such as general aviation areas) that are not separated by adequate security systems, measures, or procedures. This area does not include the secured area.

Aircraft operator means a person who uses, causes to be used, or authorizes to be used an aircraft, with or without the right of legal control (as owner, lessee, or otherwise), for the purpose of air navigation including the piloting of aircraft, or on any part of the surface of an airport. In specific parts or sections of this subchapter, “aircraft operator” is used to refer to specific types of operators as described in those parts or sections.

Airport operator means a person that operates an airport serving a aircraft operator or a foreign air carrier required to have a security program under part 1544 or 1546 of this chapter.

Airport security program means a security program approved by TSA under § 1542.101 of this chapter.

Airport tenant means any person, other than an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter, that has an agreement with the airport operator to conduct business on airport property.

Airport tenant security program means the agreement between the airport operator and an airport tenant that specifies the measures by which the tenant will perform security functions,

and approved by TSA, under §1542.113 of this chapter.

Approved, unless used with reference to another person, means approved by TSA.

Cargo means property tendered for air transportation accounted for on an air waybill. All accompanied commercial courier consignments, whether or not accounted for on an air waybill, are also classified as cargo. Aircraft operator security programs further define the term “cargo.”

Checked baggage means property tendered by or on behalf of a passenger and accepted by an aircraft operator for transport, which is inaccessible to passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

Escort means to accompany or monitor the activities of an individual who does not have unescorted access authority into or within a secured area or SIDA.

Exclusive area means any portion of a secured area, AOA, or SIDA, including individual access points, for which an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter has assumed responsibility under §1542.111 of this chapter.

Exclusive area agreement means an agreement between the airport operator and an aircraft operator or a foreign air carrier that has a security program under parts 1544 or 1546 of this chapter that permits such an aircraft operator or foreign air carrier to assume responsibility for specified security measures in accordance with §1542.111 of this chapter.

FAA means the Federal Aviation Administration.

Flightcrew member means a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.

Indirect air carrier means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of a passenger air carrier. This does not include the United States Postal Service

(USPS) or its representative while acting on the behalf of the USPS.

Loaded firearm means a firearm that has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm.

Passenger seating configuration means the total maximum number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight, regardless of the number of seats actually installed, and includes that seat in certain aircraft that may be used by a representative of the FAA to conduct flight checks but is available for revenue purposes on other occasions.

Private charter means any aircraft operator flight—

(1) For which the charterer engages the total passenger capacity of the aircraft for the carriage of passengers; the passengers are invited by the charterer; the cost of the flight is borne entirely by the charterer and not directly or indirectly by any individual passenger; and the flight is not advertised to the public, in any way, to solicit passengers.

(2) For which the total passenger capacity of the aircraft is used for the purpose of civilian or military air movement conducted under contract with the Government of the United States or the government of a foreign country.

Public charter means any charter flight that is not a private charter.

Scheduled passenger operation means an air transportation operation (a flight) from identified air terminals at a set time, which is held out to the public and announced by timetable or schedule, published in a newspaper, magazine, or other advertising medium.

Screening function means the inspection of individuals and property for weapons, explosives, and incendiaries.

Screening location means each site at which individuals or property are inspected for the presence of weapons, explosives, or incendiaries.

Secured area means a portion of an airport, specified in the airport security program, in which certain security measures specified in part 1542 of this chapter are carried out. This area is

where aircraft operators and foreign air carriers that have a security program under part 1544 or 1546 of this chapter enplane and deplane passengers and sort and load baggage and any adjacent areas that are not separated by adequate security measures.

Security Identification Display Area (SIDA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes the secured area and may include other areas of the airport.

Sterile area means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, or by an aircraft operator under part 1544 of this chapter or a foreign air carrier under part 1546 of this chapter, through the screening of persons and property.

Unescorted access authority means the authority granted by an airport operator, an aircraft operator, foreign air carrier, or airport tenant under part 1542, 1544, or 1546 of this chapter, to individuals to gain entry to, and be present without an escort in, secured areas and SIDA's of airports.

[67 FR 8353, Feb. 22, 2002, as amended at 67 FR 8209, Feb. 22, 2002]

Subpart B—Responsibilities of Passengers and Other Individuals and Persons

§ 1540.101 Applicability of this subpart.

This subpart applies to individuals and other persons.

§ 1540.103 Fraud and intentional falsification of records.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this subchapter.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compli-

ance with this subchapter, or exercise any privileges under this subchapter.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this subchapter.

§ 1540.105 Security responsibilities of employees and other persons.

(a) No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this subchapter.

(2) Enter, or be present within, a secured area, AOA, SIDA or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.

(3) Use, allow to be used, or cause to be used, any airport-issued or airport-approved access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's in any other manner than that for which it was issued by the appropriate authority under this subchapter.

(b) The provisions of paragraph (a) of this section do not apply to conducting inspections or tests to determine compliance with this part or 49 U.S.C. Subtitle VII authorized by:

(1) TSA, or

(2) The airport operator, aircraft operator, or foreign air carrier, when acting in accordance with the procedures described in a security program approved by TSA.

§ 1540.107 Submission to screening and inspection.

No individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property in accordance with the procedures being applied to control access to that area or aircraft under this subchapter.

[67 FR 41639, June 19, 2002]

§ 1540.109 Prohibition against interference with screening personnel.

No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter.

§ 1540.111 Carriage of weapons, explosives, and incendiaries by individuals.

(a) *On an individual's person or accessible property—prohibitions.* Except as provided in paragraph (b) of this section, an individual may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter;

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under §§ 1544.201, 1546.201, or 1562.23 of this chapter.

(b) *On an individual's person or accessible property—permitted carriage of a weapon.* Paragraph (a) of this section does not apply as to carriage of firearms and other weapons if the individual is one of the following:

(1) Law enforcement personnel required to carry a firearm or other weapons while in the performance of law enforcement duty at the airport.

(2) An individual authorized to carry a weapon in accordance with §§ 1544.219, 1544.221, 1544.223, 1546.211, or subpart B of part 1562 of this chapter.

(3) An individual authorized to carry a weapon in a sterile area under a security program.

(c) *In checked baggage.* A passenger may not transport or offer for transport in checked baggage or in baggage carried in an inaccessible cargo hold under § 1562.23 of this chapter:

(1) Any loaded firearm(s).

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing, before checking the baggage, that

the passenger has a firearm in his or her bag and that it is unloaded;

(ii) The firearm is unloaded;

(iii) The firearm is carried in a hard-sided container; and

(iv) The container in which it is carried is locked, and only the passenger retains the key or combination.

(3) Any unauthorized explosive or incendiary.

(d) *Ammunition.* This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

[67 FR 8353, Feb. 22, 2002, as amended at 67 FR 41639, June 19, 2002; 70 FR 41600, July 19, 2005]

§ 1540.113 Inspection of airman certificate.

Each individual who holds an airman certificate, medical certificate, authorization, or license issued by the FAA must present it for inspection upon a request from TSA.

§ 1540.115 Threat assessments regarding citizens of the United States holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is a United States citizen and who holds, or is applying for, an airman certificate, rating, or authorization issued by the Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Administrator means the Administrator of the Transportation Security Administration.

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat*. An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel*. The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment*. (1) *Issuance*. If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for Materials*. Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information

described in paragraph (g) of this section.

(4) *Reply*. The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination*. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment*. (1) *In general*. The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Review and Issuance of Final Notification*. If the Deputy Administrator determines that the individual poses a security threat, the Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him. If the Administrator determines that the individual poses a security threat, the Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification*. If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat,

TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

(1) The date of personal delivery in the case of personal service;

(2) The mailing date shown on the certificate of service;

(3) The date shown on the postmark if there is no certificate of service; or

(4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat.* An individual poses a security threat when the individual is suspected of posing, or is known to pose—

(1) A threat to transportation or national security;

(2) A threat of air piracy or terrorism;

(3) A threat to airline or passenger security; or

(4) A threat to civil aviation security.

(d) *Representation by counsel.* The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment.* (1) *Issuance.* If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

(i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and

(ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment.* (1) *In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

PART 1542—AIRPORT SECURITY

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Subpart A—General

§ 1542.1 Applicability of this part.

This part describes aviation security rules governing:

(a) The operation of airports regularly serving aircraft operations required to be under a security program under part 1544 of this chapter, as described in this part.

(b) The operation of airport regularly serving foreign air carrier operations required to be under a security program under part 1546 of this chapter, as described in this part.

(c) Each airport operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued